

AMENDED IN SENATE JUNE 13, 1996  
AMENDED IN SENATE MARCH 25, 1996  
AMENDED IN ASSEMBLY MAY 16, 1995  
AMENDED IN ASSEMBLY MARCH 30, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1205**

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**Introduced by Assembly Member Morrissey  
(Principal coauthor: Assembly Member Boland)  
(Coauthors: Assembly Members Battin, Baugh, Bowler,  
Brulte, Conroy, Goldsmith, Granlund, Harvey, House,  
Martinez, Morrow, Rainey, Rogan, and Weggeland)**

February 23, 1995

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An act to ~~amend Section 368 of, and to add Section 532.1 to,~~  
*add Sections 502.9, 515, and 525 to the Penal Code, relating to*  
crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1205, as amended, Morrissey. Crimes against seniors:  
theft: ~~fraud~~ *embezzlement: extortion.*

*Existing law provides that when a judgment of imprisonment is imposed and the statute specifies 3 possible terms, the court is required to impose a middle term unless there are circumstances in mitigation or aggravation of the crime that permit the imposition of the lower or upper term.*

*This bill would provide that upon conviction of a felony violation of the laws proscribing theft, embezzlement, or*

*extortion, the fact that the victim was an elder or dependent adult shall be considered a circumstance in aggravation when imposing the term of imprisonment.*

~~(1) Under existing law, any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, shall be punished by imprisonment in the county jail, or in the state prison for 2, 3, or 4 years when the money, labor, or real or personal property taken is of a value exceeding \$400, and by fine not exceeding \$1,000 or by imprisonment in the county jail, or both, when the money, labor, or real or personal property taken is of a value not exceeding \$400.~~

~~This bill would increase the term of imprisonment in the state prison for a caretaker who is convicted of this offense from 2, 3, or 4 years to 3, 4, or 8 years. The bill also would provide that any person other than a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, shall be punished by imprisonment in the county jail, or in the state prison for 3, 4, or 6 years when the money, labor, or real or personal property taken is of a value exceeding \$400, and by fine not exceeding \$1,000 or by imprisonment in the county jail, or both, when the money, labor, or real or personal property taken is of a value not exceeding \$400. The bill would impose a state-mandated local program by expanding the scope of an existing crime.~~

~~(2) Existing law makes it a crime to knowingly and designedly, by any false or fraudulent pretense, defraud any other person of money, labor, or real or personal property.~~

~~This bill would add a 5-year enhancement to the sentence of any person who is found guilty of knowingly and designedly, by any false or fraudulent representation or pretense, causing another person to lose money or real or personal property, if the victim is 65 years of age or older.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~ *no*.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 368 of the Penal Code is~~

2 *SECTION 1. Section 502.9 is added to the Penal Code,*  
3 *to read:*

4 *502.9. Upon conviction of a felony violation under this*  
5 *chapter, the fact that the victim was an elder or*  
6 *dependent adult, as defined in Section 368, shall be*  
7 *considered a circumstance in aggravation when imposing*  
8 *a term under subdivision (b) of Section 1170.*

9 *SEC. 2. Section 515 is added to the Penal Code, to*  
10 *read:*

11 *515. Upon conviction of a felony violation under this*  
12 *chapter, the fact that the victim was an elder or*  
13 *dependent adult, as defined in Section 368, shall be*  
14 *considered a circumstance in aggravation when imposing*  
15 *a term under subdivision (b) of Section 1170.*

16 *SEC. 3. Section 525 is added to the Penal Code, to*  
17 *read:*

18 *525. Upon conviction of a felony violation under this*  
19 *chapter, the fact that the victim was an elder or*  
20 *dependent adult, as defined in Section 368, shall be*  
21 *considered a circumstance in aggravation when imposing*  
22 *a term under subdivision (b) of Section 1170.*

23 ~~amended to read:~~

24 ~~368. (a) Any person who, under circumstances or~~  
25 ~~conditions likely to produce great bodily harm or death,~~  
26 ~~willfully causes or permits any elder or dependent adult,~~  
27 ~~with knowledge that he or she is an elder or a dependent~~  
28 ~~adult, to suffer, or inflicts thereon unjustifiable physical~~  
29 ~~pain or mental suffering, or having the care or custody of~~  
30 ~~any elder or dependent adult, willfully causes or permits~~  
31 ~~the person or health of the elder or dependent adult to be~~  
32 ~~injured, or willfully causes or permits the elder or~~  
33 ~~dependent adult to be placed in a situation in which his~~

1 ~~or her person or health is endangered, shall be punished~~  
2 ~~by imprisonment in the county jail not exceeding one~~  
3 ~~year, or in the state prison for two, three, or four years.~~

4 ~~(b) Any person who, under circumstances or~~  
5 ~~conditions other than those likely to produce great bodily~~  
6 ~~harm or death, willfully causes or permits any elder or~~  
7 ~~dependent adult, with knowledge that he or she is an~~  
8 ~~elder or a dependent adult, to suffer, or inflicts thereon~~  
9 ~~unjustifiable physical pain or mental suffering, or having~~  
10 ~~the care or custody of any elder or dependent adult,~~  
11 ~~willfully causes or permits the person or health of the~~  
12 ~~elder or dependent adult to be injured or willfully causes~~  
13 ~~or permits the elder or dependent adult to be placed in~~  
14 ~~a situation such that his or her person or health may be~~  
15 ~~endangered, is guilty of a misdemeanor.~~

16 ~~(c) (1) Any caretaker of an elder or a dependent~~  
17 ~~adult who violates any provision of law proscribing theft~~  
18 ~~or embezzlement, with respect to the property of that~~  
19 ~~elder or dependent adult, shall be punished by~~  
20 ~~imprisonment in the county jail not exceeding one year,~~  
21 ~~or in the state prison for three, four, or eight years when~~  
22 ~~the money, labor, or real or personal property taken is of~~  
23 ~~a value exceeding four hundred dollars (\$400), and by~~  
24 ~~fine not exceeding one thousand dollars (\$1,000) or by~~  
25 ~~imprisonment in the county jail not exceeding one year,~~  
26 ~~or both, when the money, labor, or real or personal~~  
27 ~~property taken is of a value not exceeding four hundred~~  
28 ~~dollars (\$400).~~

29 ~~(2) Except as provided in paragraph (1), any person~~  
30 ~~who violates any provision of law proscribing theft or~~  
31 ~~embezzlement, with respect to the property of an elder~~  
32 ~~or dependent adult, shall be punished by imprisonment~~  
33 ~~in the county jail not exceeding one year, or in the state~~  
34 ~~prison for three, four, or six years when the money, labor,~~  
35 ~~or real or personal property taken is of a value exceeding~~  
36 ~~four hundred dollars (\$400), and by fine not exceeding~~  
37 ~~one thousand dollars (\$1,000) or by imprisonment in the~~  
38 ~~county jail not exceeding one year, or both, when the~~  
39 ~~money, labor, or real or personal property taken is of a~~  
40 ~~value not exceeding four hundred dollars (\$400).~~

1 ~~(d) As used in this section, “elder” means any person~~  
2 ~~who is 65 years of age or older.~~

3 ~~(e) As used in this section, “dependent adult” means~~  
4 ~~any person who is between the ages of 18 and 64, who has~~  
5 ~~physical or mental limitations which restrict his or her~~  
6 ~~ability to carry out normal activities or to protect his or~~  
7 ~~her rights, including, but not limited to, persons who have~~  
8 ~~physical or developmental disabilities or whose physical~~  
9 ~~or mental abilities have diminished because of age.~~  
10 ~~“Dependent adult” includes any person between the~~  
11 ~~ages of 18 and 64 who is admitted as an inpatient to a~~  
12 ~~24-hour health facility, as defined in Sections 1250, 1250.2,~~  
13 ~~and 1250.3 of the Health and Safety Code.~~

14 ~~(f) As used in this section, “caretaker” means any~~  
15 ~~person who has the care, custody, or control of or who~~  
16 ~~stands in a position of trust with, an elder or a dependent~~  
17 ~~adult.~~

18 ~~SEC. 2. Section 532.1 is added to the Penal Code, to~~  
19 ~~read:~~

20 ~~532.1. Any person who is found guilty of knowingly~~  
21 ~~and designedly, by any false or fraudulent representation~~  
22 ~~or pretense, causing another person to lose money or real~~  
23 ~~or personal property, shall be punished by an additional~~  
24 ~~five years in the state prison if the victim is 65 years of age~~  
25 ~~or older.~~

26 ~~SEC. 3. No reimbursement is required by this act~~  
27 ~~pursuant to Section 6 of Article XIII B of the California~~  
28 ~~Constitution because the only costs that may be incurred~~  
29 ~~by a local agency or school district will be incurred~~  
30 ~~because this act creates a new crime or infraction,~~  
31 ~~eliminates a crime or infraction, or changes the penalty~~  
32 ~~for a crime or infraction, within the meaning of Section~~  
33 ~~17556 of the Government Code, or changes the definition~~  
34 ~~of a crime within the meaning of Section 6 of Article~~  
35 ~~XIII B of the California Constitution.~~

36 ~~Notwithstanding Section 17580 of the Government~~  
37 ~~Code, unless otherwise specified, the provisions of this act~~

- 1 ~~shall become operative on the same date that the act~~
- 2 ~~takes effect pursuant to the California Constitution.~~

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